



INTER TRIBAL COUNCIL of ARIZONA

MEMBER TRIBES

AK-CHIN INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI NATION
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PASCUA YAQUI TRIBE
PUEBLO OF ZUNI
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TOHONO O'ODHAM NATION
TONTON APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI APACHE NATION
YAVAPAI PRESCOTT INDIAN TRIBE

January 11, 2013

Submitted electronically to Post2017BCP@wapa.gov

Mr. Darrick Moe
Western Area Power Administration
Desert Southwest Regional Manager
PO Box 6457
Phoenix, AZ 85005-6457

**Re: October 30, 2012 Notice of Proposed Marketing Criteria
Boulder Canyon Project – Post 2017 Resource Pool**

Dear Mr. Moe:

Please accept the following comments on behalf of the 20 member tribes of the Inter Tribal Council of Arizona (ITCA), in response to Western's proposed Hoover allocation criteria.

1. Tribal Priority

The 20 member tribes of the Inter Tribal Council of Arizona supports Western's proposal to assign tribes a first priority in the allocation sequence as an effort to redress the historic lack of tribal access to project benefits, most effectively including the more than 50 tribes in the project service area. Express delineation of tribes by Western is consistent with relevant, documented Congressional intent such as that evidenced in the House of Representatives Report referencing tribes as "contracting directly with Western" and "develop[ing] allocation criteria in direct consultation with Western." No other interest group is so referenced therein. See House Report 112-159(I) dated July 20, 2011.

Western's action is also directly consistent with the documented legislative intent behind the 2011 Hoover Power Act as Congress there directed Western to "fairly and equitably determine allocations from the new power pool." See July 20, 2011 House Report.

2. Utility Status

The 20 member tribes of the Inter Tribal Council of Arizona further support Western's consistent application of its historic policy to allocate Hoover power to new tribal customers without regard to utility status. Again, this most meaningfully includes new tribal customers in the project service area, almost all of whom lack utility status at present. Furthermore, nothing in the legislation or legislative record contradicts Western's adherence to this practice with respect to Hoover.

3. Less than 1 MW Allocation Prohibition Without Aggregation Arrangement

- a. Western has no actual justification for singling out any new customer group based solely on allocation size by imposing an added requirement; Western has offered no argument other than its own convenience benefit, which, by itself, is not a justification. Furthermore, as proposed, this requirement only penalizes the smallest scale new customers, a group consisting overwhelmingly of small tribes in the service area.
- b. The aggregation concept is vague as defined. There is no specification, for example, of Western's treatment of any customer that loses its aggregation arrangement before the end of the contract term.
- c. Western should reference aggregation only with respect to the historic allowances for the same on a voluntary basis in arranging for allocation scheduling and/or delivery. Currently almost all tribal customers seek benefit arrangements other than direct delivery; as such, an aggregation requirement is further lacking in context.
- d. Finally, Western can appropriately address its asserted allocation "rounding" concerns solely through operating protocols. The BCP power is contingent capacity and associated energy. This means that if an allocation is made for 1 MW, operationally based upon water conditions the customer will most likely receive something less than 1 MW. Western deals with this issue of reductions in allocations on a routine basis through operational protocols.

4. Double Dipping Issue

The proposed criteria are silent as to how Western will treat customers eligible for/receiving Hoover allocations through the States of Nevada or Arizona. Unless Western will complete a supplemental public process encompassing this issue prior to the allocation process, the matter must be addressed in the scope of the establishment of these allocation criteria. To ignore this issue as outside the scope of Western's authority or role would be inconsistent with Congressional intent behind the 2011 Hoover Act, in particular the directive that Western "fairly and equitably" allocate the resource. See July 2011 House Report.

5. EPAMP

Western withdrew its proposed application of EPAMP in relation to the process by Federal Register Notice on December 28, 2011. Congressional intent behind the governing legislation requires that Western follow only "federal preference standards." Even if Western interprets this proviso as encompassing deductions to new allottees on the basis of other hydro resources available for their use and/or benefit, in this instance, existing customers are receiving renewed contracts with a 5% share reduction; no consideration of their other federal resource availability has been made by statute or proposed by Western. As such, Western should, in this instance only impose a maximum equivalent 5% reduction on new tribal customers receiving the benefit of other federal hydro resources. Such an approach displays consistency by Western across its management of Hoover power output and harmonizes Western's action on this point with Congressional directives as well as Western's own withdrawal of EPAMP application in this instance.

6. Public Process

Western has stated that it will review all comments and issue final marketing criteria as a result of this single step process. But Western's identified procedure to address the allocation of the Schedule D resource is vague. Western's response to issues and concerns being raised with respect to matters omitted from the criteria proposed will accordingly constitute new agency action. Western must therefore provide a supplemental opportunity to address any new criteria created as part of this public comment process prior to making any allocations. A failure by Western to clarify its proposal and provide additional public comment opportunity will

contravene established principles of administrative law and also defy relevant legislative intent for an “open, thorough and transparent assessment” in making new customer allocations. See House Report, July 20, 2011.

Thank you for your thorough consideration of these comments. The 20 member tribes of the Inter Tribal Council of Arizona look forward to further engagement with Western in this process.

Sincerely,

A handwritten signature in blue ink that reads "Terry Rambler". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Terry Rambler,
President, Inter Tribal Council of Arizona
Chairman, San Carlos Apache Tribal